

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 5, 1998

ALL COUNTY LETTER NO: 98-79

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS**REASON FOR THIS TRANSMITTAL**

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: INTERIM EMERGENCY REGIONAL CENTER FUNDED SERVICES ARE NOT ALTERNATIVE RESOURCES UNDER THE IN-HOME SUPPORTIVE SERVICES AND PERSONAL CARE SERVICES PROGRAMS

This All-County Letter informs counties of changes in the In-Home Supportive Services (IHSS) Program which resulted from the settlements of the following court cases: Gordilla v. Anderson; Christensen v. Anderson; and Stone, et al. v. Anderson. Judgments were served on all three of these cases on July 2, 1998. Under the terms of these judgments, the receipt of interim, emergency regional center funded services, which are available under Welfare and Institutions Code (WIC) sections 12300(b) and (c), 12300.1 and 14132.95(d)(copies attached) and are provided pending an award of IHSS/Personal Care Services Program (PCSP) services, is not a basis for denying eligibility or granting reduced hours of IHSS/PCSP services. These Regional Center services are not alternative resources pursuant to WIC section 12301(a)(copy attached) when the person with the developmental disabilities or the regional center reports that: (1) the services are being provided on an interim basis pending a determination of the person's eligibility for IHSS/PCSP; and (2) the interim Regional Center funded supported living or in-home services will cease upon initiation of those services by the County IHSS/PCSP program. Please note that the consent of the recipient or their legal representative is currently required before recipient information can be shared with Regional Centers.

Regional Center funded services which support a consumer in his/her own home, and are not available under WIC sections 12300(b) and (c), 12300.1 and 14132.95(d), shall not be used as a basis to deny eligibility for or reduce the number of hours of IHSS/PCSP services at any time. As previously determined in the Arp v. Anderson judgment, which was communicated in All County Letter Number 98-53, IHSS/PCSP services must be granted as though no services are being provided through a Regional Center. IHSS/PCSP determination of services must be based strictly on the County Welfare Department's assessment of the applicant.

Consumers of regional center services who receive interim services are entitled to IHSS/PCSP benefits if they are found to be eligible. Payments will be made from the date of the IHSS/PCSP application. Duplicate payments are not allowed to any provider, applicant or recipient when services have been provided at no cost to the claimant. Since IHSS/PCSP has been determined the payer of first resort, it is the responsibility of regional centers not to duplicate IHSS/PCSP services.

For new applicants, these changes are effective as of the date of this letter. Any changes in services or benefits for existing IHSS/PCSP recipients will be made during their annual reassessment.

Please contact Vickey Walker, Manager of Operations and Technical Assistance--North at (916) 229-4596 or Mike Ellison, Manager of Operations and Technical Assistance--South, at (916) 229-4036 of my staff, if you have any questions regarding this All-County Letter.

Sincerely,

***Original Document Signed By Leonard Tozier For
Donna L. Mandelstam On 10/5/98***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachments

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, and personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.**
- (2) Bathing, oral hygiene, and grooming.**
- (3) Dressing.**
- (4) Care and assistance with prosthetic devices.**
- (5) Bowel, bladder, and menstrual care.**
- (6) Repositioning, skin care, range of motion exercises, and transfers.**
- (7) Feeding and assurance of adequate fluid intake.**
- (8) Respiration.**
- (9) Assistance with self-administration of medications.**

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE

12300.1. As used in Section 12300 and in this article, "supportive services" include those necessary paramedical services that are ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. These necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for service. Any and all references to Section 12300 in any statute heretofore or hereafter enacted shall be deemed to be references to this section. All statutory references to the supportive services specified in Section 12300 shall be deemed to include paramedical services.

CALIFORNIA CODES
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12301. (a) The intent of the Legislature in enacting this article is to provide supplemental or additional services to the social and rehabilitative services in Article 6 (commencing with Section 12250) of this chapter. The Legislature further intends that necessary in-home supportive services shall be provided in a uniform manner in every county based on individual need consistent with this chapter and, for the 1992-93 fiscal year the appropriation provided for those services in the Budget Act, in the absence of alternative in-home supportive services provided by an able and willing individual or local agency at no cost to the recipient, except as required under Section 12304.5. An able spouse who is available to assist the recipient shall be deemed willing to provide at no cost any services under this article except nonmedical personal services and paramedical services. When a spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care, the spouse shall also be paid for accompaniment when needed during necessary travel to health-related appointments and protective supervision.

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 and to any person for whom coverage would be mandatory under Title XIX of the Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code), but for the provisions of Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code), is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations. For any persons who meet the criteria specified in subdivision (a), but for whom federal financial participation is not available, eligibility shall be available pursuant to Section 12305.6. All persons who receive benefits pursuant to subdivision (a) shall meet all applicable deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42, United States Code).

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992-93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

- (A) Assistance with ambulation.**
- (B) Bathing, oral hygiene and grooming.**
- (C) Dressing.**
- (D) Care and assistance with prosthetic devices.**
- (E) Bowel, bladder, and menstrual care.**
- (F) Skin care.**
- (G) Repositioning, range of motion exercises, and transfers.**
- (H) Feeding and assurance of adequate fluid intake.**
- (I) Respiration.**
- (J) Paramedical services.**
- (K) Assistance with self-administration of medications.**

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.